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12  
13 IN THE UNITED STATES DISTRICT COURT  
14 EASTERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,  
16 Plaintiff,  
17 v.  
18 GABRIEL MATA,  
19 Defendant.

20 CASE NO. 1:20-CR-00028-DAD-BAM  
21 STIPULATION REGARDING EXCLUDABLE  
22 TIME PERIODS UNDER SPEEDY TRIAL ACT;  
23 AND ORDER  
24 DATE: April 13, 2020  
25 TIME: 2:00 p.m.  
COURT: Hon. Barbara A. McAuliffe

26 This case is set for a status hearing on April 13, 2020. On March 16, 2020, this Court issued  
27 General Order 611, which suspends all jury trials in the Eastern District of California scheduled to  
28 commence before May 1, 2020. This General Order was entered to address public health concerns  
related to COVID-19.

29 Although the General Order addresses the district-wide health concern, the Supreme Court has  
30 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive  
31 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.  
32 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no  
33 exclusion under" § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.*  
34 at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
35 judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either  
36 orally or in writing").

1       Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
2 and inexcusable—the General Order requires specific supplementation. Ends-of-justice continuances  
3 are excludable only if “the judge granted such continuance on the basis of his findings that the ends of  
4 justice served by taking such action outweigh the best interest of the public and the defendant in a  
5 speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets  
6 forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice  
7 served by the granting of such continuance outweigh the best interests of the public and the defendant in  
8 a speedy trial.” *Id.*

The General Order excludes delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following the eruption of Mt. St. Helens. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also* *United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

19        In light of the societal context created by the foregoing, this Court should consider the following  
20 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-  
21 justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date  
22 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any  
23 pretrial continuance must be “specifically limited in time”).

## **STIPULATION**

25 Plaintiff United States of America, by and through its counsel of record, and defendant, by and  
26 through defendant's counsel of record, hereby stipulate as follows:

- 27       1. By previous order, this matter was set for status on April 13, 2020.  
28       2. By this stipulation, defendant now moves to continue the status conference until July 27,

1 2020, and to exclude time between April 13, 2020, and July 27, 2020, under Local Code T4.

2 3. The parties agree and stipulate, and request that the Court find the following:

3 a) The government has represented that the discovery associated with this case  
4 includes investigative reports and related documents in electronic form including approximately  
5 130 pages of documents. All of this discovery has been either produced directly to counsel  
6 and/or made available for inspection and copying.

7 b) Counsel for defendant desires additional time to consult with her client, to review  
8 the current charges, to conduct an investigation and research related to the charges, and to  
9 discuss potential resolutions with her client.

10 c) Counsel for defendant believes that failure to grant the above-requested  
11 continuance would deny him/her the reasonable time necessary for effective preparation, taking  
12 into account the exercise of due diligence.

13 d) The government does not object to the continuance.

14 e) In addition to the public health concerns cited by General Order 611 and  
15 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in  
16 this case because Counsel or other relevant individuals have been encouraged to telework and  
17 minimize personal contact to the greatest extent possible. It will be difficult to avoid personal  
18 contact should the hearing proceed.

19 f) Based on the above-stated findings, the ends of justice served by continuing the  
20 case as requested outweigh the interest of the public and the defendant in a trial within the  
21 original date prescribed by the Speedy Trial Act.

22 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,  
23 et seq., within which trial must commence, the time period of April 13, 2020 to July 27, 2020,  
24 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4]  
25 because it results from a continuance granted by the Court at defendant's request on the basis of  
26 the Court's finding that the ends of justice served by taking such action outweigh the best interest  
27 of the public and the defendant in a speedy trial.

28 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the

1 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
2 must commence.

3 IT IS SO STIPULATED.  
4

5 Dated: March 25, 2020

6 McGREGOR W. SCOTT  
United States Attorney

7 /s/ ANTHONY YIM  
8 ANTHONY YIM  
9 Assistant United States Attorney

10 Dated: March 25, 2020

11 /s/ Melissa B. Baloian  
12 Melissa B. Baloian  
Counsel for Defendant  
13 Gabriel Mata

14 **ORDER**

16 IT IS SO ORDERED that the Status Conference is continued from April 13, 2020 to **July 27, 2020**  
17 at **1:00 PM before Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to 18 U.S.C. §  
18 3161(h)(7)(A), B(iv).

19 IT IS SO ORDERED.

20 Dated: March 25, 2020

21 /s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE